

DEC 28 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERARDO AMADOR; MARIA CRUZ
AMADOR,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-74367

Agency Nos. A79-290-390
A79-290-391

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 20, 2007 **

Before: GOODWIN, WALLACE, and HAWKINS, Circuit Judges.

Gerardo Amador and Maria Cruz Amador, natives and citizens of Mexico,
petition for review of an order of the Board of Immigration Appeals (“BIA”)

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying their motion to reopen removal proceedings. We dismiss the petition for review.

The evidence the Amadors presented with their motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence would not alter its prior discretionary determination that they failed to establish the requisite hardship. *See id.* at 600 (holding that 8 U.S.C. § 1252(a)(2)(B)(i) bars this court from reviewing the denial of a motion to reopen where “the only question presented is whether [the] new evidence altered the prior, underlying discretionary determination that [the petitioner] had not met the hardship standard.”) (Internal quotations and brackets omitted).

Our conclusion that we lack jurisdiction to review the BIA's determination that the Amadors did not make out a prima facie case of hardship forecloses their argument that the BIA denied them due process by failing to consider and address the entirety of the evidence submitted with the motion to reopen. *See Fernandez*, 439 F.3d at 603-04.

PETITION FOR REVIEW DISMISSED.